

REMARKS

Claims 9 to 27 are currently pending and being considered in the present application.

Reconsideration is respectfully requested based on the following.

Applicants thank the Examiner for acknowledging the claim for foreign priority and for indicating that all certified copies of the priority documents have been received.

To facilitate matters, enclosed are courtesy copies of the references ALREADY DISCLOSED in the previously filed IDS and 1449 papers. It is noted that these references should have been provided by the International Authority. It is respectfully requested that the Examiner consider all such references, and acknowledge their consideration, consistent with U.S.P.T.O. practice and the MPEP.

According to M.P.E.P. § 1893.03(g), “[a]s a result of an agreement among the European Patent Office (EPO), Japan Patent Office (JPO), and the United States Patent and Trademark Office (USPTO), copies of documents cited in the international search report issued by any one of these International Searching Authority Offices generally are being sent to the other Offices when designated in the international application.” *Accordingly, in United States national stage applications where the international search was conducted by the EPO, JPO, or USPTO, copies of the documents cited in the international search report are made available to the examiner in the national stage application, so that the applicant need not provide such copies and is not required to provide such copies.*

In sum, to facilitate matters, enclosed are courtesy copies of the subject foreign references. It is respectfully requested that the Examiner consider all such references, and acknowledge their consideration, consistent with U.S.P.T.O. practice and the MPEP.

Claim 9 to 16 were rejected under 35 U.S.C. 103(a) as unpatentable over the “Background Information” in view of Schumacher et al. U.S. Patent No. 7,137,645 (“Schumacher”). (*Paper Number 20080917, p. 5.*)

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. See *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

While the rejections may not be agreed with, to facilitate matters, claim 9 now includes the features of claim 20.

The Schumacher reference concerns a control device for a restraining system in a motor vehicle is proposed, a safety switch, which also includes a watchdog, performing the function of a safety switch in the control device. The safety switch monitors sensor signals which are transmitted to the processor of the control device for plausibility and triggers appropriate restraining systems via a time unit for a predefined time period only when the safety switch itself detects a trigger event. Based on the supplementary data from the sensor signals, the safety switch infers how the sensor signals are to be processed. The safety switch is designed so that it triggers the restraining systems correspondingly assigned to the sensors. When the control device is switched on, the processor performs a test of the safety switch by generating a test signal using the sensors. (See Abstract).

Accordingly, the Schumacher reference does not describe or suggest the feature of a “pressure sensor situated in a side part of the vehicle, the pressure sensor having a housing with a pressure inlet opening, wherein the switch is situated so that the switch interrupts a data transmission from the pressure sensor to the processor, as a function of its state”, as provided for in the context of claim 1.

In particular, the Final Office Action refers to a pressure sensor and plausibility sensor of Background Information as the pressure sensor and plausibility sensor. (*Paper Number 20080627*, pg 4.) The Final Office Action concedes that the “Background Information” (regardless of its proper characterization) does not describe the plausibility sensor as a switch that is assigned to the housing of the pressure sensor. (*Paper Number 20080627*, pages 4 and

6.) The Final Office Action does not appear to specifically describe a pressure sensor housing with a pressure inlet opening.

In particular, the Final Office Action relies on control device 10 as being the housing of the side impact sensor. (*Paper Number 20080627, pg 4*). It is respectfully submitted that control device 10 is an electrical component used to check individuals IC's when it is turned on. The control device includes processor 4, safety switch 5, time unit 6, ignition control 7, output stages 8 and acceleration sensor 1. (*Schumacher, Col. 3, lines 33 to 40; Col. 4, lines 1 to 15*). Even if control device 10 may provide a common electrical platform for a plurality of electrical IC's to coincide, it is plain that having a common electrical platform does not disclose nor suggest a housing for a pressure sensor, let alone pressure sensor housing with a pressure inlet opening, as provided for in the context of the claimed subject matter.

Moreover, it is respectfully submitted that obviousness rejections without documentary evidence "should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration." MPEP § 2144.03(A). The Background Information document does not disclose the present housing with a pressure inlet opening. The Final Office Action essentially admits this by using inherency to cure this deficiency. *Paper Number 20080917, p. 2*.

In accordance with MPEP § 2144.03(C) and 37 CFR § 1.104(d) (2), it is respectfully requested that an Examiner's affidavit be provided to support the obviousness rejections as to the asserted steps (or items) that were present within the art at the time of the presently claimed subject matter, since such knowledge is apparently within the personal knowledge of the Examiner.

Moreover, the Final Office Action apparently does not specifically describe the motivation to modify the system of the Background Information to achieve the functionalities of that of the Schumacher system. In particular, even if the Background Information may refer to a pressure sensor reacting to an adiabatic pressure increase created by the side impact, Schumacher does not describe such a device located within the control device 10. That is, the acceleration sensor 1 contains electronics that amplify and digitize the measuring signals. A side impact sensor is connected on the passenger door and not affiliated with the control device 10. Significantly, this satellite arrangement away from the control device 10 is necessary to detect effectively impacts to the passenger door. (*Schumacher, Col. 2, lines 60 to 65; Col. 3, lines 5 to 10 and lines 32 to 37; Fig. 1*). To the extent that acceleration sensor

and impact sensor are located in distinct areas within Schumacher's system, with the control device 10 providing centralized testing of ICs while verifying corresponding sensor signals from satellite sensors 2 and 3, which are distributed over the vehicle to perform a plausibility check, there is no reasonable expectation of successful operation of Schumacher's system if a different configuration of control device 10 and satellite sensors 2 and 3 is used.

For example, combining impact sensors 2 and 3 to be a part of control device 10 would require a plurality of control devices 10 wherever impact sensors 2 and 3 are located. This would result in a duplication of other components on the control device 10, including the safety switch 5 thereby creating a plurality of safety switches and sensors. Notably, Schumacher's centralized safety switch relies on sensors distributed over the vehicle to provide data and utilizes the appropriate hardware algorithm and the appropriate thresholds to correctly process these sensor signals. (*Schumacher*, Col. 1, lines 57 to 61). Conspicuously, the Final Office Action offers no suggestion on how to modify Schumacher's distributed sensor system with a centralized switch to a distributed sensor system with a plurality of safety switches nor guidance as to how the newly modified platform (in particular, the newly distributed safety switches and their interactions with the distributed sensors) could even operate.

Accordingly, in light of the foregoing reasons, Schumacher does not disclose or suggest the feature of a pressure sensor situated in a side part of the vehicle, the pressure sensor having a housing with a pressure inlet opening, and a plausibility sensor, the plausibility sensor being a switch that is inside the housing of the pressure sensor, wherein the switch is situated so that the switch interrupts a data transmission from the pressure sensor to the processor, as a function of its state, as provided for in the context of the claimed subject matter.

Therefore, claims 9 and 16 are allowable, as are their dependent claims 10 to 15.

As further regards the obviousness rejections, it is respectfully submitted that the cases of *In re Fine*, *supra*, and *In re Jones*, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992), make plain that the Office Action's generalized assertions that it would have been obvious to modify or combine the references do not properly support a § 103 rejection. It is respectfully submitted that those cases make plain that the Office Action reflects a subjective "obvious to try" standard, and therefore does not reflect the proper evidence to support an obviousness rejection based on the references relied upon. In particular, the Court in the case of *In re Fine* stated that:

The PTO has the burden under section 103 to establish a *prima facie* case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. This it has not done. . . .

Instead, the Examiner relies on hindsight in reaching his obviousness determination. . . . One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

In re Fine, 5 U.S.P.Q.2d at 1598 to 1600 (citations omitted; italics in original; emphasis added). Likewise, the Court in the case of In re Jones stated that:

Before the PTO may combine the disclosures of two or more prior art references in order to establish *prima facie* obviousness, there must be some suggestion for doing so, found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. . . .

Conspicuously missing from this record is any evidence, other than the PTO's speculation (if it be called evidence) that one of ordinary skill . . . would have been motivated to make the modifications . . . necessary to arrive at the claimed [invention].

In re Jones, 21 U.S.P.Q.2d at 1943, 1944 (citations omitted; italics in original).

It is believed and respectfully submitted that the present Final Office Action offers no evidence, but only conclusory hindsight, reconstruction and speculation, which these cases have indicated does not constitute evidence that will support a proper obviousness finding. Unsupported assertions are not evidence as to why a person having ordinary skill in the art would be motivated to modify or combine references to provide the claimed subject matter of the claims to address the problems met thereby. Accordingly, the Office must provide proper evidence of a motivation for modifying or combining the references to provide the claimed subject matter.

More recently, the Federal Circuit in the case of In re Kotzab has made plain that even if a claim concerns a “technologically simple concept” — which is not the case here — there still must be some finding as to the “specific understanding or principle within the knowledge of a skilled artisan” that would motivate a person having no knowledge of the claimed subject matter to “make the combination in the manner claimed,” stating that:

In this case, the Examiner and the Board fell into the hindsight trap. The idea of a single sensor controlling multiple valves, as opposed to multiple sensors controlling multiple valves, is a technologically simple concept. With this simple concept in mind, the Patent and Trademark Office found prior art statements that in the abstract appeared to suggest the claimed limitation. But, there was no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of Kotzab's invention to make the combination in the manner claimed. In light of our holding of the absence of a motivation to combine the teachings in Evans, we conclude that the Board did not make out a proper *prima facie* case of obviousness in rejecting [the] claims . . . under 35 U.S.C. Section 103(a) over Evans.

In re Kotzab, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000) (emphasis added). Here again, there have been no such findings to establish that the features discussed above of the rejected claims are met by the reference relied upon. As referred to above, any review of the reference, whether taken alone or combined, makes plain that it simply does not describe the features discussed above of the rejected claims.

It is therefore respectfully submitted that Schumacher and the Background Information (regardless of its proper characterization – which as asserted is not conceded), taken alone or in any combination, does not describe or suggest the features of independent claim 9 and 16. Claims 2 to 15 depend from claim 9 and are therefore allowable for the same reasons.

Accordingly, it is submitted that claims 9 to 16 are allowable.

Claim 9 was rejected under 35 U.S.C. 103(a) as unpatentable over the “Background Information” in view of U.S. Patent No. 5,504,379 to Mazur et al. (“Mazur”). (*Paper Number 20080917, p. 7*).

The Mazur reference refers to a vehicle crash sensing arrangement that includes an accelerometer and an integrator for determining crash velocity in response to sensed crash acceleration. A second integrator determines a crash displacement value from the crash velocity value. A variable velocity threshold value is determined in response to the determined crash displacement value. The crash velocity value is compared against the variable threshold value. The comparator provides a signal indicative of a vehicle crash condition when the crash velocity value is greater than the velocity threshold value. (*Mazur, Abstract*).

The Final Office Action appears to assert transistor 52 as a plausibility sensor being a switch. (*Paper Number 20080917, p. 7*). It is respectfully submitted that a plausibility sensor is a sensor used for the sensing of the side impact. (*Specification, p. 1, lines 5 to 7*). In stark contrast, transistor 52 merely act as a current switch to deploy an air bag assembly when a digital HIGH signal is present. Specifically, when a crash condition requires deployment of the air bag, the deployment signal 50 is a digital HIGH. This digital HIGH turns ON the transistor 52 which causes sufficient current to flow through the squib so as to ignite the squib. (*Mazur, Col. 5, lines 1 to 10*). At best, transistor 52 acts as a current switch to the squib 26, however, providing conducting current not suggest switch interrupts a data transmission, much less interrupt a data transmission from the pressure sensor to the processor, as a function of its state, as provided for in the context of the claimed subject matter.

The Mazur reference further teaches away from the claimed subject matter, since the transistor is controlled by a controller 14, which acts as the control system and provides the actuation signal 50 for the activation of the current transistor. Conspicuously, the controller dictates the activation and deactivation of the current transistor, in addition, the accelerometer 28 continuously provides information to the controller 14 without interruption. Even if the current transistor may control the current flow to the squib, nevertheless, the activation of the transistor is dictated by output 50 from controller 14. As such, it is the controller that interrupts and dictates activation and deactivation of current transistor, rather than a switch that interrupt a data transmission from the pressure sensor to the processor, as provided for in context of claim 9.

Accordingly, the Mazur document does not disclose any of the features described above, and does not disclose or suggest that the deficiencies of Schumacher or the Background Information (regardless of its proper characterization) should be remedied or changed in any way to provide the presently claimed subject matter. Still further, since the secondary reference does not cure -- and is not asserted to cure -- the critical deficiencies of the primary reference, claims 9 to 16 are allowable.

Accordingly, claims 9 to 16 are allowable.

Claims 17 to 24 and 25 to 27 respectively depend from claims 16 and 9 and are therefore allowable for the same reasons.

Accordingly, claims 9 to 27 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the pending claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,
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